

IN THE SUPREME COURT OF OHIO

WILLIAM N. BEER : CASE NO:
 :
 PLAINTIFF/APPELLEE, :
 :
 vs. : ON APPEAL FROM THE HAMILTON
 : COUNTY COURT OF APPEALS,
 : FIRST APPELLATE DISTRICT
 CHRISTOPHER W. BEER-SUDBRINK :
 : COURT OF APPEALS
 DEFENDANT/APPELLANT. : CASE NO. C-140753

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT CHRISTOPHER W. BEER-SUDBRINK**

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**EXPLANATION OF WHY THIS IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
RAISES SIGNIFICANT CONSTITUTIONAL QUESTIONS**

Marriage is a contract from which there is no exit absent adjudication through the state. Thus, a citizen's ability to access the courts to terminate a marital contract is essential to due process of law.

But now, in some parts of our state—but not others—Ohio citizens are being denied access to our courts to terminate their marriages. In the First and Twelfth Districts, Ohio citizens who have legally entered into out-of-state marital contracts are forced to remain married against their will because those districts deny same-sex married couples access to our courts. But trial courts in other districts have granted same-sex divorces.¹ Where a citizen lives and what trial court hears an action should not determine whether a person has the ability to access the courts for relief. This Court should accept jurisdiction to harmonize the divergent practices of the lower courts.

Ohio faces an unusual dilemma requiring this Court's guidance. Hundreds of our residents have entered into valid out-of-state marital contracts that are not recognized by our state government, but are recognized by the federal government and, as of the date of filing, 37 states and the District of Columbia. The federal government and other states hold parties accountable to those contracts, regardless of the law in their domicile. The federal government bestows benefits and responsibilities on legally married persons, such as federal income tax consequences, student loan repayment options, and military marital benefits. A person who is unable to divorce a same-sex spouse may not remarry—even if to an opposite-sex partner—without risking criminal bigamy charges. But because family law is reserved to the realm of state control, federal courts lack the ability to terminate marital contracts. States' durational residency requirements prevent Ohioans from obtaining divorces in other states.

¹ Vanessa McCray, *Ohio Judges Divided On Same-Sex Divorce*, TOLEDO BLADE (Oct. 14, 2014), available at <http://www.toledoblade.com/Politics/2014/10/14/Ohio-judges-divided-on-same-sex-divorce.html> (accessed February 24, 2015).

Thus, Ohio citizens are stuck in “legal limbo” because they are unable to terminate their marriages.

This appeal does not challenge the constitutionality of Ohio’s same-sex marriage ban. Rather, it involves the separate right to access the courts to terminate a valid out-of-state marital contract. The issue before this Court is narrow: whether Ohio courts have jurisdiction to grant divorces to same-sex couples who were legally married elsewhere. This question is especially important because both the federal government and a majority of states continue to recognize the validity of these marital contracts until the married couple is able to obtain a divorce.

Whether Ohio courts are permitted to grant same-sex divorces impacts Ohio’s population as a whole. Ohio has taken a public-policy stance against same-sex marriage. But denying couples the right to divorce effectively forces same-sex marriage relationships to continue. If Ohio courts may deny same-sex married couples access to the courts to terminate their marriages, then the only way for an Ohio same-sex married couple to divorce would be if one or both parties moved out of the State, which is often an insurmountable burden—particularly considering states’ durational residency requirements.

Legal same-sex marriage is new. Its consequences are still being determined by courts. And because same-sex marriages are recognized by the federal government and many states—but not by Ohio—our courts, too, will be presented with novel questions of law, such as the issue on appeal. This Court’s jurisdiction over this appeal is the only way for same-sex married couples in parts of Ohio to enjoy equal access to the courts as other Ohio citizens. Jurisdiction is necessary to protect the right of all citizens to exercise their right to terminate their marital contracts.

Appellant Christopher W. Beer-Sudbrink was deprived of his fundamental right to access the courts and to have a meaningful opportunity to obtain judicial relief. Therefore, Beer-Sudbrink respectfully asks this Court to accept jurisdiction over his appeal.

STATEMENT OF THE CASE AND FACTS

William N. Beer and Christopher W. Beer-Sudbrink entered into a valid marital contract in Massachusetts. Beer and Beer-Sudbrink are now Ohio residents. They have no children, but marital property and debt remain to be divided. Beer-Sudbrink is unemployed. Beer makes approximately \$76,000.00 per year. Both parties are encumbered by student-loan debt.

Beer filed for divorce in July 2014. The trial court dismissed the complaint for lack of jurisdiction based on Ohio law prohibiting recognition of marriages between persons of the same sex.

The parties jointly appealed to the First Appellate District of Ohio. The First District dismissed the appeal for lack of jurisdiction. (Appx., 3.)²

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: Ohio courts have jurisdiction to grant divorces to all citizens with valid out-of-state marital contracts.

A. Neither State nor Federal Law Precludes Same-Sex Divorces

Lower courts have issued conflicting judgments involving whether a same-sex couple with a valid out-of-state marital contract may access Ohio courts to terminate that marital contract. Several trial courts have granted divorces. *See Stone v. Swanson*, Lucas C.P. No. DR 20140634 (Sept. 25, 2014) (based on full faith and credit); *Goetting v. Olvani*, Lucas C.P. No. DR 20120535 (Sept. 13, 2012) (based on equal protection and full faith and credit); *Dzhembaz v. Volkov*, Franklin C.P. No. 12 DR 002762 (Aug. 10, 2012); *Baize v. Wissman*, Franklin C.P. No. 12 DR 000275 (Mar. 15, 2012).

But the First District dismissed Beer-Sudbrink's appeal for lack of jurisdiction. (Appx., 3.) And the Twelfth District, citing a recent Sixth Circuit decision, affirmed the dismissal of a divorce action

² Pursuant to the First District's ruling, Beer-Sudbrink filed a complaint for a writ of procedendo with this Court. He also files this appeal because he believes that the First District had jurisdiction.

for lack of jurisdiction because of Ohio's ban on same-sex marriage. *McKettrick v. McKettrick*, 12th Dist. No. CA2014-05-076, 2015-Ohio-366, citing *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir.2014).

Neither *DeBoer* nor Ohio law affect whether Ohio courts have jurisdiction to grant same-sex divorces. In *DeBoer*, the Sixth Circuit held that Ohio is not required to subsidize and confer the rights and benefits of marriage upon lawfully married same-sex couples now living in Ohio. The case did not consider whether Ohio courts had jurisdiction to terminate those same-sex marriages.

Likewise, the Revised Code is silent as to whether trial courts may terminate same-sex marital contracts. A resident may not form a marital contract with a person of the same sex in Ohio, as that is "against strong public policy." R.C. 3101.01(C)(1). But the statutes are silent as to whether a same-sex couple who entered into a valid marital contract may provide proof of marriage via a valid out-of-state marriage license. R.C. 3105.12. Although the terms "man" and "woman" are commonly utilized in the Revised Code, the statutes were written decades before same-sex marriage began to be recognized.

Ohio's constitution defines marriage as between a man and a woman and prohibits the creation or recognition of "a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage." Ohio Constitution Article XV, Section 11. But the constitutional provision is silent regarding whether same-sex couples legally married in other jurisdictions may access the courts to obtain a divorce.

Moreover, Ohio courts, including this Court, have carved out exceptions to this constitutional provision. First, this Court upheld Ohio's domestic violence law, which protected unmarried, cohabitating heterosexual persons "living as a spouse," because people who fit that category are not provided **all** of the rights, benefits, or duties of marriage. *State v. Carswell*, 114 Ohio St.3d 210, 2007-Ohio-3723, 871 N.E.2d 547, ¶ 3-4. This Court specifically noted that spouses have many other rights

and duties, while former spouses do not. *Id.* at ¶ 37. Second, the Eighth District ruled that terminating or modifying spousal support on the grounds of cohabitation does not create or recognize a legal status approximating marriage for individuals who cohabit. *Fitz v. Fitz*, 8th Dist. No. 92535, 2009-Ohio-5236, ¶ 12. Third, the Eighth District held that domestic partner registries in Ohio cities are not unconstitutional because they do not approximate the design, significance, or effect of marriage. *Cleveland Taxpayers for Ohio Constitution v. Cleveland*, 8th Dist. No. 94327, 2010-Ohio-4685, ¶ 15. It interpreted *Carswell* as signifying that “any legally established relationship bearing less than all the attributes of marriage is constitutional.” *Id.* at ¶ 10.

Although Wyoming, like Ohio, once defined marriage as between one man and one woman, the Wyoming Supreme Court held that state courts have subject-matter jurisdiction to terminate marriages between same-sex couples lawfully married in other jurisdictions. *Christiansen v. Christiansen*, 2011 WY 90, 253 P.3d 153 (2011). The court determined that recognizing a valid out-of-state marital contract for the limited purpose of accessing the courts to obtain a divorce did not lessen the state’s ban on same-sex marriages because the divorce proceeding did not involve recognition of the marriage as an “ongoing relationship.” *Id.* at ¶ 12. The court stated that “accepting that a valid marriage exists plays no role except as a **condition precedent** to granting a divorce, and after that condition precedent is set the laws of divorce apply and the laws regarding marriage play no role.” (Emphasis added.) *Id.*

The Wyoming Supreme Court’s reasoning creates a fair solution to the problem faced by same-sex married people in Ohio who wish to divorce. Affording full faith and credit to legal same-sex marriages for the **sole purpose** of granting divorces does not diminish Ohio’s strong public policy against subsidizing ongoing marital contracts. Recognizing same-sex marriages solely to grant a divorce would lessen one of “the most perplexing and distressing complication[s]” in domestic

relations law: the concept of being “married” in one state and “unmarried” in another state. *Williams v. North Carolina*, 317 U.S. 287, 299 (1942). Although recognizing out-of-state same-sex marriages in the context of subsidizing the ongoing marital contract is against Ohio’s stated public policy, Ohio does not have a reciprocal strong public policy against terminating marital contracts. As demonstrated by the Wyoming Supreme Court, the Full Faith and Credit Clause, as well as the doctrine of comity, permits states that ban same-sex marriage to maintain their public-policy stance against same-sex marriages, while recognizing out-of-state same-sex marriage contracts for the limited purpose of allowing citizens access to the courts to terminate those marital contracts.

Granting same-sex married couples access to Ohio courts to obtain a divorce neither contravenes Ohio law nor diminishes Ohio’s ban on same-sex marriage. As a divorce terminates the very type of marriage that offends Ohio public policy, permitting same-sex married couples to divorce actually furthers Ohio’s laws.

B. Citizens Have a Fundamental Right to Access the Courts

A marital contract is more than a mere private contract. Once a marriage is formed, “the law steps in and holds the parties to various obligations and liabilities.” *Maynard v. Hill*, 125 U.S. 190, 210–211, 8 S.Ct. 723, 31 L.Ed. 654 (1888). Unlike other contracts, a marriage contract cannot be entered or terminated absent the approval of the State.

Ohio’s constitution and statutory code ban same-sex marriages. Ohio Constitution Article XV, Section 11; R.C. 3101.01(C). But divorce is a separate constitutional right. *See, e.g., Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). The *Boddie* Court held that the due process clause of the Fourteenth Amendment to the United States Constitution requires that parties must be afforded an opportunity to access the courts for the purpose of obtaining a divorce. *Id.* at 380-

381. And in *Hodgson v. Minnesota*, the United States Supreme Court declared that “the regulation of constitutionally protected decisions, such as where a person shall reside or whom he or she shall marry, must be predicated on legitimate state concerns other than disagreement with the choice the individual has made.” 497 U.S. 417, 435, 110 S.Ct. 2926, 111 L.Ed.2d 344 (1990).

This Court also has emphasized that people have the right to access courts to obtain a divorce. It suggested that the right to access courts to obtain a divorce is a “fundamental constitutional right[.]” *State ex rel. Harris v. Horvath*, 105 Ohio St.3d 185, 2005-Ohio-1149, 824 N.E.2d 76, ¶ 8; *see, also, State ex rel. Blevins v. Mowrey*, 45 Ohio St.3d 20, 22-23, 543 N.E.2d 99 (1989) (indigent parties may not be denied access to courts for a divorce based on inability to pay for service by publication).

How Ohio treats common-law marriage demonstrates the importance that the State places on citizens’ access to the courts for divorce. While Ohio does not solemnize common-law marriages, it recognizes common-law marriages legally entered into in other jurisdictions. R.C. 3105.12. These common-law married couples need not access the courts to obtain valid marriages. *Id.* But Ohio requires—and permits—common-law marriages to be terminated via the courts. *E.g., Spencer v. Harmon*, 8th Dist. No. 80367, 2002-Ohio-4909 (appellate court reversed dismissal of divorce complaint filed by person married via common-law marriage).

C. Ohio and Federal Due Process Rights Entitle Ohio Citizens Access to Ohio Courts to Terminate Valid Out-of-State Marital Contracts

The United States Constitution does not permit the State to deny its citizens a fundamental right absent the State satisfying heightened scrutiny and showing that an unconstitutional burden is not placed upon the fundamental right. *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) (employing strict scrutiny to analyze statute prohibiting interracial marriage). In Ohio—and across the nation—the only way to dissolve marriages is through the courts. R.C. 3105.011; *Boddie*,

401 U.S. at 377, 28 L.Ed.2d 113. Unlike commercial contracts, there is “no instance where two consenting adults may divorce and mutually liberate themselves from the constraints of legal obligations that go with marriage, and, more fundamentally, the prohibition against remarriage, without invoking the State’s judicial machinery.” *Id.* at 377.

As access to the courts is fundamental right, and because divorce requires a court’s approval, federal due process “requires, at a minimum, that absent a countervailing state interest of **overriding significance**, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.” (Emphasis added.) *Id.*

Under Ohio law, due process requires, at a minimum, that when persons are forced to settle a claim in court, they must be provided a meaningful opportunity to be heard. *E.g., In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 17. Whether due process has been satisfied requires consideration of three factors: 1.) the private interest affected; 2.) the risk of erroneous deprivation of that interest through the procedures used; and 3.) the state’s interest, including the function involved and fiscal and administrative burdens. *Id.* at ¶ 18.

A citizen’s private interest in obtaining a divorce outweighs any state interest. And the risk of erroneous deprivation is more than a risk—it is a certainty.

1. *A Citizen’s Private Interest In Obtaining A Divorce Is Significant*

A citizen’s private interest in accessing the courts to obtain a divorce is a constitutional right. *Horvath*, 105 Ohio St.3d 185, 2005-Ohio-1149, 824 N.E.2d 76 at ¶ 8. That Ohio does not recognize same-sex marriage has no bearing on whether the State may deny citizens access to the courts to exercise their right to divorce.

When two same-sex people legally marry, the fact that they move to Ohio, where same-sex

marriage is not recognized, does not mean that the couple is no longer married. In the eyes of the federal government, and in other jurisdictions in which same-sex marriages are recognized, the couple remains married. The federal government provides no federal remedy for same-sex couples to dissolve their marriages, even if they live in a state that does not recognize their marital contracts.

In 2013, the United States Supreme Court declared unconstitutional Section Three of the Defense of Marriage Act, effectively mandating that the federal government recognize same-sex marriages. *United States v. Windsor*, 570 U.S. 12, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013). Following *Windsor*, the Internal Revenue Service recognized valid same-sex marriages, regardless of the married couple's place of domicile. Rev. Rul. 2013-17, 2013-38 I.R.B. 201. This ruling applies to all federal tax provisions where marriage is a factor, such as filing status, claiming personal and dependency exemptions, taking the standard deduction, and claiming the earned income tax credit or child tax credit. *Id.* Likewise, after *Windsor*, the United States Department of Education promulgated rules recognizing all valid same-sex marriages. Dept. of Education, GEN-14-14 (July 24, 2014). For income-driven repayment plan purposes, "spouse" includes legal same-sex spouses. *Id.*

Beer-Sudbrink is legitimately harmed by being denied access to Ohio courts to terminate his marital contract. First, because the federal government and most states recognize his marriage, Beer-Sudbrink will be denied the fundamental right to get remarried—even if he chose to marry a woman—because a second marriage would be bigamy if he cannot legally terminate his current marital contract. Second, because the federal government recognizes his marriage, his tax and student loan payment status are negatively affected. Beer-Sudbrink must file his federal income taxes as "married," which precludes him from obtaining the tax benefits afforded to lower-income single persons. And as his spouse earns a much higher income, Beer-Sudbrink's marital contract negatively affects his ability to

repay his student loans based on an income-driven repayment plan.

2. State Interest Does Not Override Private Interest

The Twelfth District, like the trial court in the instant case, ruled that trial courts lack jurisdiction to grant same-sex divorces because the Ohio legislature has declared that “any marriage between persons of the same sex is against the strong public policy of this state.” *McKettrick*, 2015-Ohio-366, ¶ 12-13. While Ohio’s marriage laws may be sufficient to deny people access to Ohio courts to solemnize their in-state marriage, it is not a sufficient rationale to deny the parties access to the courts to terminate a marriage. No State interest exists that would justify depriving Ohio citizens the constitutional right to access the courts to obtain a divorce.

First, the right to marry is a right separate from the right to divorce. Marriage bestows on the parties certain rights, such as the right to file a joint bankruptcy petition, hospital visitation, next-of-kin status for emergency medical decisions, and tax-free transfer of property. Divorce permanently severs legal ties between two people, thus terminating all of the benefits and responsibilities of marriage and separating their property. Further, it allows a person the right to enter into a new marriage relationship. While the right to divorce would not exist absent marriage, divorce is a separate right.

Second, citizens who lawfully married a same-sex spouse become stuck in legal limbo, unable to terminate their marriage while domiciled in Ohio. This is especially unfair considering that states have residency requirements and must live in a state for months or years before being permitted to divorce. The State should not force parties to relocate as a prerequisite to divorce.

Third, barring people who were legally married in another state from getting a divorce goes against what Ohio has stated is its public interest. Ohio has chosen to ban same-sex marriages. Yet, at the same time, by refusing parties access to the courts to terminate their marriages, the First and

Twelfth Districts are actually forcing same-sex marriages to continue.

Any claimed interest in barring same-sex divorce is greatly outweighed by citizen's constitutional right to access the courts for a divorce. Ohio should not force marriage upon its citizens.

3. *Absent Due Process, Erroneous Deprivation Is Guaranteed*

Some states have added an exception to their divorce residency requirements. They allow same-sex couples who married in that state to divorce in that state, even if they live elsewhere, if the couple's home state does not permit same-sex divorces. *See, e.g.*, Minn. Stat. 518.07. Massachusetts, the state in which Beer-Sudbrink and his husband married, does not have such an exception; in fact, its residency requirement denies court access to couples who have "removed into this commonwealth for the purposes of obtaining a divorce." Mass. Gen. Laws Chapter 208-5. Thus, Beer-Sudbrink cannot divorce his spouse without physically relocating to another state.

States' durational residency requirements for divorces are constitutional. *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). But those requirements were upheld only because they were not a total deprivation of access to divorce courts; they only imposed a delay. *Id.* at 410.

The "risk" of erroneous deprivation of Beer-Sudbrink's interest in exercising his right to divorce goes beyond a mere risk. When courts, like the trial court below, refuse to exercise jurisdiction over a same-sex divorce, deprivation of the parties' right to divorce is a certainty. Beer-Sudbrink cannot get a divorce in the state of Ohio. Unless he moves to a different state, he and his spouse will be forced to remain married against their will.

Ohio's interest in denying Beer-Sudbrink—and potentially hundreds of other Ohio citizens who legally married a same-sex spouse in another jurisdiction—does not outweigh his interest in obtaining a divorce. And deprivation is not just a risk, but a certainty. Denying Beer-Sudbrink access to the

courts to obtain a divorce is a violation of his constitutional right to due process.

D. Denying Access to the Courts Based on Sexual Orientation Violates Equal Protection

Ohio's equal protection clause provides, "Government is instituted for [the people's] equal protection and benefit." Ohio Constitution, Article I, Section 2. Ohio's equal protection clause requires the same analysis as the Fourteenth Amendment to the United States Constitution. *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970, 908 N.E.2d 401, ¶ 11. It is well-settled that equal-protection principles subject laws affecting fundamental interests to strict scrutiny. *Grutter v. Bollinger*, 539 U.S. 306, 326, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003). A statutory classification that significantly interferes with the exercise of a fundamental right cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests. *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978) (striking down a statute restricting marriage rights of persons owing child support because the statutory classification substantially interfered with a fundamental right).

1. *Banning same-sex divorce is not narrowly tailored to a sufficiently important state interest*

If the right to access the courts to terminate a marital contract is a fundamental right—as both this Court and the United States Supreme Court have suggested—then restricting access to the courts to terminate a marriage for certain classifications must satisfy heightened scrutiny. *Id.*; *Horvath*, 105 Ohio St.3d 185, 2005-Ohio-1149, 824 N.E.2d 76, at ¶ 8; *Boddie*, 401 U.S. at 380-381, 28 L.Ed.2d 113.

The classification here is Ohio citizens with legal same-sex marital contracts. Beer-Sudbrink entered into a valid marital contract with a person of the same sex, which is contrary to Ohio public policy. However, without access to the courts, Beer-Sudbrink is forced to remain in his same-sex marriage, which leaves him classified as "married" for a plethora of federal rights and responsibilities.

Further, by denying Beer-Sudbrink access to the courts, he is also forbidden from getting remarried—even if he chose to marry a woman. The government does not have a sufficiently important interest or a narrowly tailored law to prevent Beer-Sudbrink from terminating his marital contract simply because he legally married a person of the same sex in another jurisdiction.

Preventing same-sex divorces goes beyond the State’s public-policy interest in preventing same-sex marriage. The State has achieved its public-policy goal because same-sex persons may not marry in-state or have their marriages fully recognized in the same manner as opposite-sex marriages. Restricting same-sex married couples’ access to the courts is not narrowly-tailored to achieve the State’s interest. Indeed, denying divorce forces same-sex marriage relationships to continue.

2. Ohio does not have a legitimate state interest in excluding same-sex couples from divorce

If the right to divorce does not warrant heightened scrutiny, the equal protection clause requires at least a rational basis. *Department of Agriculture v. Moreno*, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973). Under the rational basis review, a law that implicates neither a fundamental right nor a suspect classification comports with the Equal Protection Clause only if the statute is rationally related to a legitimate government interest. *Menefee v. Queen City Metro*, 49 Ohio St.3d 27, 29, 550 N.E.2d 181 (1990). Thus, Ohio may deny Beer-Sudbrink access to the courts only if that denial is rationally related to a legitimate government interest, which cannot be motivated by a “bare congressional desire to harm a politically unpopular group.” *Moreno* at 534.

The Equal Protection Clause prohibits classifications from being drawn “for the purpose of disadvantaging the group burdened by the law.” *Romer v. Evans*, 517 US. 624, 633, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996); *see also Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003) (striking down laws criminalizing same-sex sexual conduct as irrational). In *Romer*, the United

States Supreme Court invalidated a Colorado constitutional amendment that deprived all legal protection under state antidiscrimination laws to persons classified as homosexuals because the law was “born of animosity” toward homosexuals and had no rational relation to a legitimate governmental purpose. *Id.* at 634.

The United States Supreme Court recently expanded its equal protection analysis of classifications based on sexual orientation when it struck down a provision of the federal Defense of Marriage Act (“DOMA”). *Windsor*, 570 U.S. 12, 186 L.Ed.2d 808. A surviving same-sex spouse was forced to pay federal estate taxes because DOMA prohibited her from benefiting from the federal surviving spouse exemption—even though she lived in a state that recognized her marriage. *Id.* The Court “reject[ed] the long-established precept that the incidents, benefits, and obligations of marriage are uniform for all married couples within each State, though they may vary, **subject to constitutional guarantees**, from one State to the next.” (Emphasis added.) *Id.* at 18. In other words, states do not have unfettered discretion to control laws regulating the family, if such laws discriminate based on sexual orientation without a rational basis.

While Ohio may have a rational basis to refuse to **subsidize** a lawful same-sex marriage, no plausible rationale exists to deny a lawfully married same-sex couple access to Ohio courts to **terminate** their marital contract. In *DeBoer*, the Sixth Circuit upheld the states’ constitutional bans on same-sex marriage under rational basis review based upon the government’s interest in fostering male-female procreative relationships. 772 F.3d 388 (6th Cir.2014). But this rationale has no significance to the issue on appeal. Beer-Sudbrink is not seeking recognition of his marriage to obtain the rights and benefits associated with opposite-sex marriage. Rather, his out-of-state marriage merely exists as a condition precedent for him to access Ohio courts to obtain a divorce. This Court need not recognize

of Beer-Sudbrink's marriage beyond what is necessary to grant him access to the courts to terminate his marital contract.

Because the State has excluded Beer-Sudbrink from the only forum empowered to terminate his marital contract, any asserted state interest in fostering male-female relationships is insufficient to deny Beer-Sudbrink access to the courts.

CONCLUSION

This appeal does not challenge the constitutionality of Ohio's marriage ban. Rather, it asks this Court to harmonize the lower courts' rulings involving same-sex divorces and declare that Ohio courts have jurisdiction to terminate valid out-of-state marital contracts between persons of the same sex.

Ohio, as a minority state that does not recognize same-sex marriages, will continue to confront the problem faced by the parties in this case. Half of marriages end in divorce. As more and more same-sex Ohioans marry out of state, and as more jurisdictions recognize same-sex marriages, whether our courts have jurisdiction to terminate same-sex marriages will become increasingly important. This Court's jurisdiction over this appeal is necessary to determine the fate of those Ohioans who wish to exit a same-sex marriage.

Beer-Sudbrink does not challenge the constitutionality of Ohio's marriage ban. He does not seek recognition of his marriage to obtain benefits associated with opposite-sex marriage. Instead, Beer-Sudbrink respectfully requests that this Court to accept jurisdiction over his appeal so that he may access Ohio courts to obtain a divorce.

Respectfully Submitted,

/s Joshua R. Langdon

Joshua R. Langdon (0090956)

COUNSEL FOR APPELLANT,
CHRISTOPHER W. BEER-SUDBRINK

CERTIFICATE OF SERVICE

I hereby certify that this Memorandum in Support of Jurisdiction was served via e-mail pursuant to Civ.R. 5(B)(2)(f) on upon Mitchell Allen at mitchell@allenlawco.com on February 26, 2015.

/s Joshua R. Langdon
Joshua R. Langdon (0090956)

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ENTERED
DEC -1 2014



COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

William Norman Beer

Plaintiff

- vs -

Christopher William Beer-Sudbrink

Defendant

Case No: DR1401458
File No : E265875
CSEA :

ENTRY DISMISSING
COMPLAINT FOR DIVORCE
and COUNTERCLAIM AND
DENYING MOTION TO
FILE AMENDED
COMPLAINT FOR DIVORCE,
ANNULMENT AND
DECLARATORY
JUDGMENT
Judge Searcy

Plaintiff filed a Complaint for Divorce on July 30, 2014 and a Motion to File Amended Complaint on November 24, 2014. Defendant filed a Counterclaim on September 24, 2014. Counsel for both Plaintiff and Defendant appeared in front of Magistrate Florez on November 5, 2014 and November 25, 2014.

The jurisdiction of the Hamilton County Court of Common Pleas, Division of Domestic Relations, is governed by Ohio Revised Code § 2301.03 and encompasses: "all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court."



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Appx. 1

Plaintiff and Defendant are both of the same gender and have alleged that a marriage occurred in Stockbridge, Massachusetts on June 17, 2011. Plaintiff is requesting a divorce, dissolution or annulment of this union.

The State of Ohio, pursuant to Oh. Const. Art. XV, § 11 (2012) defines marriage as:

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

Pursuant to Ohio law, this Court has jurisdiction to grant a divorce only to those persons whose marriage is recognized by the State of Ohio. Furthermore, pursuant to Revised Code Section § 3101.01(C)(2):

Any marriage entered into by persons of the same sex in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state.

Any decree or final entry issued in this case would be void ab initio.

Furthermore, in the November 6, 2014 Sixth Circuit Court of Appeals decision (6th Cir. Case Nos. 14-1341; 3057; 3464; 5291; 5297; 5818) the 6th Circuit Court of Appeals upheld the constitutionality of the Ohio law at the heart of this issue.

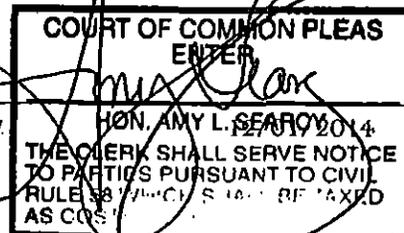
Therefore, the Plaintiff's Motion to Filed Amended Complaint is hereby denied and Plaintiff's Complaint for Divorce filed July 30, 2014 and Defendant's Counterclaim filed September 24, 2014 are hereby dismissed with prejudice for lack of jurisdiction.

IT IS SO ORDERED.

Judge Searcy

2

Copies sent by Clerk of Courts to:
Mitchell W Allen Esq, Attorney For Plaintiff
Joshua R Langdon, Attorney For Defendant



APPX. 2



D109207857

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ENTERED
JAN 14 2015

WILLIAM NORMAN BEER,

APPEAL NO. C-140753
TRIAL NO. DR-1401458

Appellant,

vs.

ENTRY OF DISMISSAL

CHRISTOPHER WILLIAM BEER-
SUDBRINK,

Appellee.

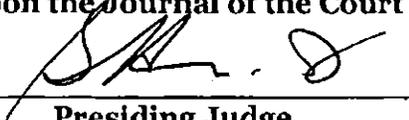
This cause came on to be considered upon the appeal from the trial court.

The Court *sua sponte* dismisses the appeal for lack of jurisdiction. Both parties assert that the domestic-relations court improperly declined jurisdiction over their complaints for divorce because they are a same-sex couple. This appeal does not present a justiciable controversy for the Court. The proper avenue of redress is a writ compelling the domestic-relations court to exercise jurisdiction.

It is further ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To The Clerk:

Enter upon the Journal of the Court on JAN 14 2015 per order of the Court.

By: 
Presiding Judge

(Copy sent to counsel)

FILED
LUCAS COUNTY,

2014 SEP 25 1 A 10:20

DOMESTIC RELATIONS
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

GREGORY ETHAN STONE,
5840 Summit Street
Sylvania, OH 43560
SSN xxx-xx-2181
DOB 2/2/65

Plaintiff,

v

STEWART MACK SWANSON,
6955 Dorr St. #15
Springfield Township, OH 43615
SSN xxx-xx-7542
DOB 1/26/59

Defendant.

/ CASE NO: DR2014-0634
/ Judge Nicely
/ FINAL JUDGMENT ENTRY

/ Scott A Ciolek
/ Attorney for Plaintiff
/ 901 Washington
/ Toledo, OH 43604
/ Phone 419-740-5935
/ Supr Ct Reg 0082779

MAILED

SEP 30 2014

E-JOURNALIZED

SEP 26 2014

This cause came on to be heard this 25th day of September, 2014 on Plaintiff's Complaint for Divorce. The Court finds that Defendant was properly served by Summons and with a copy of the Complaint pursuant to statute and, therefore, the Court has jurisdiction over the subject matter and the parties to this suit.

Plaintiff appeared in Court with his attorney, Scott A. Ciolek. Defendant did appear without counsel, did not file an Answer or other pleading in this case, and is in default for answer to Plaintiff's Complaint. This matter proceeded on Plaintiff's Complaint for Divorce

The Court finds that proper notice of the trial date was provided to both parties at least seven (7) days prior to the commencement of trial as provided by law.

The Court finds from the evidence that Plaintiff has been a bona fide resident of the State of Ohio for more than six (6) months immediately preceding the filing of his Complaint and of the County of Lucas for more than ninety (90) days and the venue is proper pursuant to statute and Civil Rule 3(B)(2) of the Ohio Rules of Civil Procedure

The Court finds from the evidence that the parties were married to each other on August 5, 2004 in Provincetown, Massachusetts, and that no children have been born issue of said marriage. The Court further finds that the parties hereto are same sex partners and were legally married in the state of Massachusetts where same sex marriage is recognized. The state of Ohio gives full faith and credit to all marriages that were legally entered into and recognized in another state. Therefore this Court has jurisdiction over the parties and the subject matter of this action.

The Court further finds that that parties are incompatible and that there exists a state of incompatibility between the parties

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff is granted a divorce from Defendant and that the marriage contract heretofore existing is hereby terminated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither party is entitled to payment of spousal support from the other and therefore no spousal support is awarded to

either party. This Order is non-modifiable and the Court does not retain jurisdiction as to the issue of spousal support.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is awarded free and clear of any claims of the Defendant the real estate located at 5840 Summit Street, Sylvania, Ohio

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall retain the automobile that are in their own name free and clear of any claims of the other.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall retain any stock, membership interest and investment accounts in their own name

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall pay and be responsible for all other debts they may have incurred in their own respective names and hold the other harmless.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall receive their own pension and retirement plans in their own respective names.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall receive their own life insurance policies.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall receive their own bank accounts, checking/savings in their own name.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties have already divided the personal property and each party shall keep and retain whatever personal property they may have in their own possession

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall be responsible for their own attorney's fees

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that court costs shall be paid from the deposit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any injunctions issued by this Court are hereby vacated and held for naught.

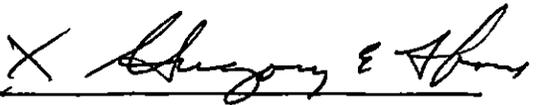
No final record.

Approved:



SCOTT A. CIOLER
Attorney for Plaintiff


JUDGE
Daniel Satterberg
Assignment

X 

Plaintiff GREGORY E. STONE

X 

Defendant - STEWART M. SWANSON

FILED
LUCAS COUNTY
IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO
DOMESTIC RELATIONS DIVISION

2012 SEP 13 A 11:39

MELISSA F. GOETTING *
2707 Pickle Rd. #14 DOMESTIC RELATIONS *
Oregon, OH 43616 BERNIE QUILTER *
SSN. Xxx-xx-9865 CLERK OF COURTS *
DOB. 10-9-74 *

Plaintiff,

vs.

DANIELLE M. OLIVANI *
2707 Pickle Rd. #55 *
Oregon, OH 43616 *
SSN. Xxx-xx-xxxx *
DOB. 6-26-76 *

Defendant.

Case No. DR12-0535

Judge Ramsey

**FINAL JUDGMENT ENTRY
OF DIVORCE**

Stephen T. Priestap (0060098)
626 Madison Ave. #603
Toledo, OH 43604
Phone: 419.243.2042
Fax: 419.243.9304

Attorney for Plaintiff

* * * * *

This cause came on for final hearing on the 13th day of September, 2012, upon the complaint for divorce of the Plaintiff. Plaintiff and witness appeared in court together with counsel, and the court being duly advised in the premises enters the following:

Plaintiff, Melissa Goetting has been a bona fide resident of the State of Ohio for more than six (6) months preceding the filing of this complaint, and a resident of the County of Lucas within said State for a period of more than ninety (90) days immediately preceding the filing of this complaint for divorce.

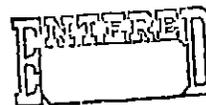
Plaintiff and Defendant were married to each other on the 1st day of August, 2011 in the State of Connecticut, that there have been no minor

E-JOURNALIZED

SEP 13 2012

MAILED

SEP 17 2012



Appx. 8

children born as issue of this marriage, to wit, and that neither party is now pregnant.

Based upon the testimony of the Plaintiff and witness, the court finds that the Plaintiff is entitled to a divorce from Defendant, and that the Plaintiff and Defendant are incompatible as alleged in the complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the marital relationship now existing between the Plaintiff and the Defendant be and the same is hereby dissolved and terminated and the Plaintiff is awarded an absolute decree of divorce from the Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff and Defendant shall be and are hereby granted free and clear of any further claims or rights of the other all household goods, furnishings and appliances now in their respective possessions. Further, each party is awarded the vehicles which are currently in their respective possessions, if any, and each party shall pay any indebtedness due on said vehicles and hold the other party harmless therefrom.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff and Defendant shall each pay the debts that they have incurred in their own respective and individual names, and shall hold the other party harmless thereon. There are no known joint obligations of the parties.

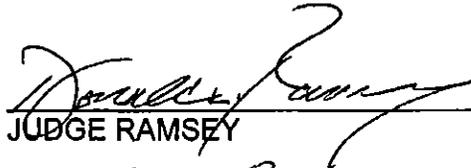
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall be awarded the retirement accounts, pensions, 401k plans, bank

accounts, IRAs, or other savings plans currently in their names, if any, free and clear of any claims of the other party.

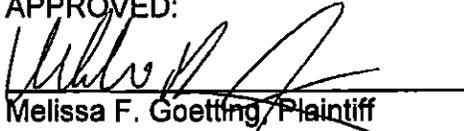
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this suit shall be paid out of the deposit being held with the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party is waiving spousal support for now and forever; and each party shall pay their own attorney fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that notwithstanding the marriage amendment to the Ohio Constitution of 2004, this Court grants full faith and credit to the laws of the State of Connecticut which established the lawful marriage of the parties, and as a matter of guaranteeing equal protection rights under the United States Constitution, this Court grants the parties' divorce.


JUDGE RAMSEY
9-13-12

APPROVED:


Melissa F. Goetting, Plaintiff

N/A

Danielle M. Olivani, Defendant


Stephen T. Priestap,
Attorney for Plaintiff

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